

KAUK510001662014



**ORDERS ON I.A NO.15**

After allowing the report of Court Commissioner in respect of agricultural lands, the present application is filed by the petitioners under Order 26 Rule 10 R/w Section 151 of C.P.C for appointment of Civil Engineer of TMC, Haliyal as Court Commissioner to carry out Court Commissioner work on the basis of preliminary decree in respect of following house properties.

- a) House Property bearing No.121 and 121A of D ward, now as 204 and 205 of D ward Haliyal, Tq: Haliyal, Dist: Uttar Kannada its CTS No.69.
- b) House property bearing No.63 of D ward, now as 127 of D ward, Haliyal, Tq: Haliyal, Dist: Uttar Kannada its CTS No.942.
- c) House property bearing No.46 of D ward, now as 104 of D ward, Haliyal, Tq: Haliyal, Dist: Uttar Kannada its CTS No.36, 37, 38 respectively by metes and bounds in the interest of justice and equity.

**2.** The petitioner No.1 has filed an affidavit in support of the instant application wherein, it is stated that, they have obtained decree in O.S No.97/1982 and in the present petition, the Tahasildar, Haliyal was appointed as Court Commissioner to prepare the scheme of partition in respect of agricultural lands and house properties but, the Court Commissioner has not carried out the commission work in respect of residential properties due to mismatching of property numbers in the revenue records. It is further stated that, the residential properties fall under the jurisdiction of TMC, Haliyal which are renumbered as against the original house properties numbers. As such, it is necessary to appoint Civil Engineer of TMC, Haliyal to prepare the scheme of partition on the basis of preliminary decree passed in O.S No.97/1982.

**3.** On the other hand, the respondents No.2(b), 2(c), 2(d), 3(a), 3(b) and 3(d)(ii) have filed objections to the instant application wherein, they have contended that, earlier commissioner has shown his inability to measure the residential properties in view of mismatching of property numbers with revenue records and as such, without clarification on the said aspect, the petitioners cannot file the instant application for the same

purpose which is hit by Section 11 of the C.P.C. It is further contended that, there is no designation of Civil Engineer in TMC, Haliyal and as such, the petitioners cannot seek appointment of Civil Engineer of TMC, Haliyal as Court Commissioner and even there is no prayer in the instant application as to what the Commissioner has to do after completion of his work. It is further contended that, without any supporting application, the petitioners have produced documents and as such, the present application is not maintainable on the ground that, the documents which have produced by the petitioners is not in accordance with the provisions of the Karnataka Civil Rules of Practice. With this, it is prayed to reject the instant application.

4. Whereas, the respondents No.1(a) to 1(h) have filed separate objections to the instant application wherein, they have asserted more or less the same contentions as stated above and further contended that, the present application is barred by limitation and also contended that, RSA No.100105/2014 is pending before the Hon'ble High Court of Karnataka. With this, it is prayed to reject the instant application.

5. Heard on both side. Perused the entire materials.

6. So far as the plea of res-judicata is concerned, though it is true that, the principle of res-judicata is even applicable to the interlocutory applications but, in the present application, the petitioners have sought to appoint Civil Engineer as Court Commissioner to prepare scheme of partition in respect of house properties. Whereas, in the earlier application, the petitioners have sought to appoint the Tahasildar, Haliyal for preparing scheme of partition. Hence, the relief claimed in the earlier application and in the present application are not one and the same. More over, on perusal of order-sheet dated 26.06.2014, it was ordered to prepare the scheme of partition only in respect of agricultural lands and not house properties. Having regard to the same, the plea of res-judicata raised by the aforesaid respondents is not tenable.

7. It is one more contention of the aforesaid respondents that, there is no post of Civil Engineer in TMC, Haliyal and as such, the present application is not maintainable. So far as this contention is concerned, the aforesaid respondents have produced a letter issued by the TMC, Haliyal wherein, it is stated that, there is no post of Civil Engineer but, the said document was disputed by the petitioners. As such, an explanation was called

from the TMC, Haliyal regarding the said document and also with regard to existence of post of Civil Engineer in TMC, Haliyal. To the said explanation, the Chief Officer of TMC, Haliyal has appeared before the Court and submitted that, the document produced by the aforesaid respondents has been issued by the TMC, Haliyal. So far as the designation of Civil Engineer is concerned, it is stated that, there is no post of Civil Engineer in TMC, Haliyal but, there are two posts of Junior Engineer and the same are vacant and Junior Engineer of Sirsi CMC is deputed to TMC, Haliyal.

**8.** It is admitted fact that, the numbers of the house properties which were prevailing at the time of filing of O.S No.97/1982 have been changed subsequently because of many reasons and also because of lapse of decades. That alone is not the ground to reject the application. The concerned authorities are duty bound to ascertain the corresponding numbers of house properties. It is admitted fact that, no commission work is carried out in respect of residential properties which were involved in O.S No.97/1982. Merely there is mismatch of property numbers of house properties is not a ground to reject the application at threshold. The petitioners are litigating for their

rights from the year 1982. Having regard to all these aspects, Court opines that, the present application is deserves to be allowed with the appropriate directions to the concerned departments to prepare the scheme of partition.

9. From the explanation given by the Chief Officer of TMC, Haliyal, it is evident that, there is no post of 'Civil Engineer' in TMC, Haliyal. When such being the case, question of appointment of 'Civil Engineer' of TMC, Haliyal as Court Commissioner does not arise. But, it is admitted fact that, the house properties involved in O.S No.97/1982 are now fall within the jurisdiction of TMC, Haliyal and City Surveyor, Haliyal. Both the departments are the custodians of the records of the house properties in question. Having considered to the age of the petition, Court opines that, City Surveyor, Haliyal is the competent and as well as an expert person to prepare the scheme of partition by taking the necessary assistance of the Chief Officer of the TMC, Haliyal. Having regard to the same, Court proceeds to pass the following:

**ORDER**

I.A No.15 filed by the petitioners under Order 26 Rule 10 R/w Section 151 of C.P.C is partly allowed.

The City Surveyor, Haliyal is hereby appointed as Court Commissioner to prepare the scheme of partition in respect of house properties which are mentioned in I.A No.15.

The Chief Officer of TMC, Haliyal is directed to assist the Court Commissioner to prepare the scheme of partition in all ways.

The Court Commissioner and Chief Officer of TMC, Haliyal should verify the documents of their respective offices in respect of house properties which are mentioned in the present application and prepare the scheme of partition.

Both side parties are at liberty to file their memo of instructions in the office on or before **13.01.2025**.

The fees of Court Commissioner is tentatively fixed at Rs.2,500/- payable by the petitioners on or before **13.01.2025**.

The petitioners are directed to furnish copy of I.A No.15, copy of latest amended petition, copy of earlier judgment and decree and other necessary documents to the office on or before **13.01.2025** to enable the Court Commissioner and Chief Officer of TMC, Haliyal to prepare the scheme of partition properly.

The Court Commissioner shall take assistance of Chief Officer of TMC, Haliyal and visit the house properties and prepare the scheme of partition.

The Court Commissioner shall submit his report along with sketch of the house properties and also photographs of the house properties to enable the Court to ascertain the feasibility of division.

Before executing commission work, the Court Commissioner has to issue prior notice to all parties through RPAD intimating the date and time of commission work.

However, it is made clear that, non-issuance or non-service of notice of Court Commissioner to the parties is not a ground to reject the commissioner report which would be submitted by him.

The Court Commissioner shall carry out commission work on **03.02.2025**.

The parties to the petition to be kept their presence in the spot on **03.02.2025** at the time of execution of commission work if they so desire.

The office is hereby directed to issue commission warrant on **13.01.2025** along with memo of instructions and other documents furnished by the parties without fail.

For report, call on 17.02.2025.

**Civil Judge & JMFC.,  
Haliyal.**